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2 UNITED STATES DISTRICT COURT
3 DISTRICT OF MASSACHUSETTS

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5 IN RE: NEW ENGLAND COMPOUNDING) MDL NO. 13-02419-RWZ
6 PHARMACY CASES LITIGATION)
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BEFORE: THE HONORABLE RYA W. ZOBEL
AND
THE HONORABLE JENNIFER C. BOAL

STATUS CONFERENCE

John Joseph Moakley United States Courthouse
Courtroom No. 12
One Courthouse Way
Boston, MA 02210

May 13, 2014
2:00 p.m.

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22 FOR PAUL D. MOORE, IN HIS CAPACITY AS CHAPTER 11 TRUSTEE OF
23 NECP, INC.:

24 Duane Morris LLP by MICHAEL R. GOTTFRIED, ESQ., 100 High
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1 P R O C E E D I N G S

2 (The following proceedings were held in open court before
3 the Honorable Rya W. Zobel, United States District Court Judge,
4 United States District Court, District of Massachusetts, at the
5 John J. Moakley United States Courthouse, One Courthouse Way,
6 Boston, Massachusetts, on May 13, 2014.)

7 THE COURT: Good afternoon. Please be seated.

8 COURTROOM DEPUTY CLERK URSO: Can I just remind
9 counsel that they have to talk into the microphone for all to
10 hear. And I'm going to call right now.

11 (Pause.)

12 THE COURT: Can we proceed, Lisa?

13 COURTROOM DEPUTY CLERK URSO: Yes, Judge.

14 THE COURT: First, I invited Magistrate Judge Boal to
15 sit with us on the theory that what we do here will inform
16 what she does and the interchange amongst all of us would be
17 helpful to the case.

18 So, I know we have Mr. Sobol, Ms. Parker. I've
19 forgotten your name, sorry.

20 MR. GASTEL: Hi, Judge. Ben Gastel from Branstetter,
21 Stranch & Jennings.

22 THE COURT: And --

23 MR. CHALOS: Mark Chalos, your Honor.

24 THE COURT: And Mr. Rehnquist.

25 MR. REHNQUIST: Good afternoon.

1 THE COURT: I know it. I know it.

2 MR. BRACERAS: Braceras, your Honor.

3 THE COURT: Braceras. That's what happens when you
4 get old. You're not participating?

5 MR. FENNEL: No, your Honor, we're not participating.

6 THE COURT: And then we have for the defense.

7 MR. FERN: Good afternoon, your Honor. Frederick
8 Fern.

9 THE COURT: Mr.?

10 MR. FERN: Fern, F-e-r-n.

11 MR. GAYNOR: Good afternoon, your Honor. Robert
12 Gaynor for the individual defendants.

13 MR. RABINOVITZ: Daniel Rabinovitz on behalf of
14 Medical Sales Management, Inc.

15 THE COURT: I'm sorry? It got lost in your beard.

16 (Laughter.)

17 MR. RABINOVITZ: Dan Rabinovitz on behalf of Medical
18 Sales Management, Inc. Good afternoon, your Honor.

19 MR. SOBOL: You just made the top ten, your Honor.

20 MR. MORIARTY: Good afternoon, your Honor. Matt
21 Moriarty for Ameridose.

22 THE COURT: And we have for the trustee?

23 MR. GOTTFRIED: Michael Gottfried, your Honor.

24 MR. MOLTON: Your Honor, David Molton, Brown Rudnick,
25 for the Chapter 11 creditor's committee.

1 MR. ELLIS: Your Honor, Fredric Ellis for the
2 plaintiffs.

3 MR. COREN: Good afternoon, your Honor. Michael
4 Coren, co-chair Official Creditor's Committee.

5 MS. TAYLOR: Good afternoon, your Honor. Kiersten
6 Taylor, from Brown Rudnick, also the creditor's committee.

7 THE COURT: That's about it, right? Anybody else who
8 speaks will identify himself or herself when he or she does.

9 As usual, you've done a fantastically good job with
10 your agenda and I much appreciate that.

11 So, Mr. Sobol, do you wish to go first?

12 MR. SOBOL: If I may, your Honor.

13 THE COURT: If you want to sit down to make it easier
14 to speak into the microphone, that's fine. Whatever you
15 prefer.

16 MR. SOBOL: I feel a little uncomfortable sitting
17 down in front of you, but I'll try to --

18 THE COURT: Well, you can always hold it up in your
19 hand, if you want.

20 MR. SOBOL: Good afternoon, your Honor. Tom Sobol,
21 lead counsel on the Plaintiffs' Steering Committee.

22 It only took us four months, but the lawyers figured
23 out a way to get the proposed settlement with the insiders and
24 the affiliated defendants memorialized in a settlement
25 agreement and everybody has signed it. The settlement

1 agreement is between the principals of NECC, the NECC trustee,
2 certain unaffiliated defendants, and the creditor's committee
3 and the PSC have also joined in. Excuse me.

4 (Discussion off the record.)

5 MR. SOBOL: Yes, there's two also insurers of NECC as
6 well as PMIC and Maxim.

7 The process going forward will be that there'll be
8 notice that will go out to the creditors. There's a motion
9 that's going to be scheduled later in the month to have that
10 put forward, and then a hearing date will be scheduled for a
11 -- functionally, a preliminary approval by the bankruptcy
12 court of the settlement.

13 The settlement also contemplates an order that would
14 be presented to you as well that will govern some matters here
15 in the MDL. Most notably, a stay of certain kinds of
16 activities with respect to the insiders and affiliated
17 defendants, meaning dispositive motions and provisional
18 relief, but --

19 THE COURT: When is that scheduled, more or less?

20 MR. SOBOL: I'll defer to Mr. Gottfried and Mr.
21 Molton on that, but I think that's in a motion that's
22 presented to you after there's a preliminary approval by the
23 bankruptcy court.

24 THE COURT: We're talking end of summer or
25 earlier?

1 MR. SOBOL: Oh, no. We're talking -- people are
2 aspiring to something that would be in June or early July, I
3 think.

4 It's important to note that there will be some
5 discovery contemplated against those individuals and entities
6 because there are other defendants, obviously, remaining in
7 the case and they have information that's relevant to them.
8 That is where we are at with respect to that.

9 I'll also candidly admit that because the process
10 took longer than everybody expected, although everybody was
11 working very hard to get things done, that really is true. I
12 think you know me. I can be a little bit -- try to be a
13 little bit funny at times. Although it did take four months,
14 people really did work very hard during those four months to
15 get it done.

16 I need personally to visit with the trustee: What we
17 are contemplating in terms of a schedule going forward, when
18 are we really planning to have a plan put together, when do we
19 have a vote on the plan, when are we going to get a confirmed
20 plan. Most importantly, when are we going to start
21 distributing money to the victims. That needs to be revisited
22 because we're four months later than the original announcement
23 of the settlement. And I would yield to Mr. Gottfried and Mr.
24 Molton to fill in the other aspects of this.

25 THE COURT: Mr. Gottfried.

1 MR. GOTTFRIED: Your Honor, to answer to your
2 question first, I think it pivots off the next -- the trustee
3 filed his motion for approval of the settlement in front of
4 Judge Baroff. There are actually three motions with respect
5 to three distinct settlements.

6 Judge Baroff had scheduled a hearing on the form and
7 manner of notice as to when he's going to hear that motion
8 from May 30th, and that will be in Boston on May 30th. By
9 rule, he has to give at least 25 days' notice. Generally
10 we've seen 30 days' notice. So, we're expecting the actual
11 hearing will be scheduled by Judge Baroff, obviously, with
12 respect to his calendar, probably either the very end of June,
13 which would be about 30 days later, or the very beginning of
14 July.

15 Once that hearing is held, Judge Baroff will act on
16 the motion as he deems just, and then under the support
17 agreement and the settlement agreement, as Mr. Sobol
18 referenced, there are certain actions with respect to what
19 would happen vis-à-vis the affiliated defendants, the
20 individual defendants, vis-à-vis discovery, dispositive
21 motions, preliminary relief, while the bankruptcy plan is
22 being formulated, filed and ultimately approved. The
23 agreement calls for that to take place -- a motion to be filed
24 ten business days after Judge Baroff were to approve the
25 settlement agreement. So --

1 THE COURT: So, we're in the middle of July.

2 MR. GOTTFRIED: It could be the middle of July,
3 depending on how quickly he acts. That ten-day window pivots
4 off his decision, is the actual answer.

5 MR. MOLTON: Your Honor, to get to another
6 question -- David Molton of the creditors committee -- raised
7 and referred to by Mr. Sobol. With respect to the plan and
8 the disclosure statement, it's the contemplation and the hope
9 of the trustee to have that rolled out sometime in August. So
10 that it can be in front of Judge Baroff for confirmation
11 before the calendar year-end, in which case, if that happens,
12 there may be an ability to have distributions in 2015. So,
13 that is the goal of the committee and the trustee and how
14 we're looking forward to it, and in connection with that --

15 THE COURT: Excuse me. When you say "2015," you mean
16 January, February of 2015, not December?

17 MR. MOLTON: We're hoping earlier rather than later,
18 your Honor, but all we can do right now is contemplate,
19 because, as your Honor has already seen from your experience
20 in this case, there's a lot of moving pieces.

21 And one of the things that not only will be insider
22 settlements and the insurance settlements be part of that
23 plan, but to the extent that any of the depending mediations
24 that are under your Honor's supervision result in a settlement
25 also over the next coming months, those settlements also will

1 be included in the plan and be part of the confirmation order
2 that we're going to be asking Judge Baroff to grant at the end
3 of this year.

4 THE COURT: You mean all sums that are collected from
5 the defendants by either settlement or judgment, or whatever,
6 end up in the bankruptcy pot?

7 MR. MOLTON: Your Honor, yes. The goal is that all
8 -- I'm going to refer, all sums that result from the
9 mediations -- the consensual mediations with pain clinics, the
10 medical care providers, as well as what we call the national
11 defendants, by which those defendants will want the non-debtor
12 releases that may become available by way of a confirmed plan,
13 those will be part of the plan and will be put into the
14 plaintiff pot, what we call the victim pot.

15 THE COURT: But, presumably, any claims against that
16 pot will be limited to the victims so-called in this case or
17 not -- at least not including the ordinary creditors of NECC
18 or is everybody --

19 MR. MOLTON: Judge, everybody.

20 And one of the things I think I mentioned when we
21 first introduced ourselves when you came on this case, the
22 universe of what I would call general unsecured creditors is
23 limited in this case. We don't have significant bank
24 creditors. We don't have any, I believe, secured creditors.
25 We have -- you know, I don't want to -- I don't want to

1 guesstimate the amount of general unsecured creditor claims,
2 but my understanding is that when NECC went into bankruptcy,
3 they scheduled about \$800,000 as the amount and it may be
4 more, but to the extent it's more, I don't think it's going to
5 be a significant amount that's going to interfere with
6 ensuring that a large portion, if not the predominant portion,
7 of the moneys accumulated into the estate for the purpose of
8 distribution ultimately go to victims.

9 THE COURT: Are there any provisions now with respect
10 to, I assume, mostly subsequent claims for indemnity and
11 contribution?

12 MR. MOLTON: In terms -- yes. Your Honor, to the
13 extent that entities have made indemnification claims and
14 contribution claims against the estate, they are being dealt
15 with, and if your Honor -- part of -- I'll use for an example,
16 the insider settlement because it's public now. How those are
17 being dealt with there is to the extent that the defendant
18 participants want the benefit of a bankruptcy type of release
19 as a result of a plan, they are releasing those claims, those
20 indemnification and contribution claims against the estate.

21 So, it's our contemplation that all defendant
22 participants will be negotiating to be able to benefit from
23 non-debtor releases and a plan. Part of that is they'll have
24 to be releasing whatever indemnification or contribution
25 claims they have against the estate.

1 MR. SOBOL: If I may, your Honor.

2 THE COURT: Go ahead.

3 MR. SOBOL: With respect to that one issue -- now I'm
4 going to take it a step back -- my understanding is that when
5 the bar date notice went out for any creditors of NECC, that
6 parties having contribution or indemnification claims were
7 also required to file a claim. And so, the available
8 potential parties that might have contribution or
9 indemnification claims are parties that already have,
10 obviously, a claim in the bankruptcy now because that bar date
11 expired in the middle of January or thereabouts.

12 That position, of course, from the victims' point of
13 view, is that, as a practical matter, we think that all claims
14 for contribution or indemnification should be subordinated to
15 the claims of the victims. That's an issue that will need to
16 be worked out in the context of the plan.

17 A couple of other things that I think it's important,
18 since you're showing some interest this because it's now
19 becoming relevant, to keep our mind on top of in terms of the
20 crucial issues. Another crucial issue will be, obviously, as
21 you've indicated, the plan will to have address in some way
22 the ordinary creditors, which in this case are, as a practical
23 matter, relatively de minimis, and then there'll be, call it
24 what you will, but a tort trust, and the question -- you know,
25 a pot, if you will, the tort trust created for the victims.

1 There are a couple of issues with respect to that. First --

2 THE COURT: Excuse me. Will that be done under the
3 auspices of the bankruptcy court or this Court?

4 MR. SOBOL: You pegged it. This Court. We think
5 that -- Judge Baroff has already indicated in open court
6 previously issues in terms of how to determine who should get
7 what and the relationship to what should be under the auspices
8 of this Court.

9 THE COURT: Is there an agreement on that?

10 MR. SOBOL: I don't -- I thought there used to be,
11 but I got a feeling that this is one of the issues that's
12 brewing in terms of the parallel activities in the bankruptcy
13 court and this Court, but I flagged that as an issue which you
14 need to be mindful of.

15 I'll also say that in connection with that, your
16 Honor --

17 THE COURT: Judge Baroff and I need to get together.

18 MR. SOBOL: Exactly.

19 Judge Saylor, essentially, has been doing two today
20 because there were informal discussions between he and Judge
21 Baroff and they apparently were working issues out and today
22 we have acquiesced to that occurring. That's one issue.

23 Another issue which I think that I end up stepping
24 into in my professional career is the issue of attorney's fees
25 and expenses. Now, here we have a situation where we have a

1 limited fund. There have been a lot of professionals doing a
2 lot of work, but, unfortunately, this starts out with being a
3 mass tort that involves a bankrupt defendant that has
4 extremely complicated issues, multi-parties. It's really
5 taken quite an awful lot of effort and all the rest of that,
6 and a lot of expenses, but very little money.

7 And so, there are many professionals around that will
8 need to be paid in the bankruptcy context and expenses to be
9 paid. There are also plaintiffs' counsel that have their
10 contingency fee contracts with their clients and will be
11 expected to be paid on that.

12 And so, you can imagine fairly quickly, you know,
13 something reminiscent of The Old Man and The Sea and wondering
14 how much money is going to be left over for the victims.
15 That's all I'll say.

16 It's a challenge -- that's a challenge that will be
17 before Judge Baroff. It's a challenge that I hope will be
18 also in front of you in terms of the way that the tort trust
19 gets administered, but that is another major issue that is out
20 there and would require coordination between this Court and
21 the bankruptcy court, sacrifices by lawyers, sacrifices by
22 other professionals, and some pretty touch decision making.

23 THE COURT: Thank you. Who is next? Ms. Johnson?
24 Ms. Johnson, right, not --

25 MS. JOHNSON: Yes, it is Ms. Johnson now. Thank you,

1 your Honor.

2 Turning to the status of the mediation efforts.

3 There are six entities who are currently mediating. Liberty --

4 THE COURT: I only have five on the list.

5 MS. JOHNSON: Yes, your Honor. There is one
6 mediating pursuant to a sealed order that I'm not at liberty
7 to disclose in open court, but I believe your Honor does have
8 that information and if your Honor would like an update on
9 that, we can certainly -- I'm happy to provide that to you.

10 In terms of the Liberty, the company who built and
11 installed the clean rooms, that mediation has been moving
12 forward. Plaintiffs have sent their mediation brief to
13 Liberty --

14 THE COURT: So, last month's pause has been overcome?

15 MS. JOHNSON: Yes, your Honor, it has been overcome
16 with the assistance of the trustee who has produced some
17 additional documents, also some materials have been produced
18 by some of the affiliated defendants that helped us to answer
19 some questions to get that moving forward. So, we are quite
20 appreciative of that. We do think -- we're optimistic that
21 that will resolve itself favorably.

22 In terms of Victory, Victory is the HVAC servicing
23 company. That also is moving forward well. We're pleased
24 with the status.

25 Inspira is a New Jersey clinic who is not mediating

1 pursuant to this Court's formal order, but as part of a
2 private mediation. The goal of that mediation, though, is to
3 establish a sum of money that will be paid into the tort trust
4 that Mr. Sobol referred to earlier. So, it is in that sense
5 money that is expected to be paid into and administered out of
6 the bankruptcy. There is mediation expected in either late
7 June or early July.

8 There are then two Florida clinics. The Ocala clinic
9 and the Orlando clinic. We have been working with those
10 clinics and a mediator. We think that there will be a
11 mediation in the near -- mediation dates scheduled in the very
12 near future on those.

13 And as to ARL, I'd ask Mr. Ellis to give the update
14 on that mediation.

15 MR. ELLIS: Yes, your Honor.

16 Last month I told you we had reached a settlement in
17 principle. We have exchanged drafts with ARL. They were the
18 outside testing laboratory for NECC, and we hope to have a
19 final settlement agreement, hopefully, very soon so that we
20 can include it as part of the notice that's going to go out on
21 the other settlements.

22 THE COURT: If you want to include it in the
23 settlement notice of the --

24 MR. ELLIS: Exactly, at the end of the month. So, if
25 we can get it done. So, we are pushing them to try to get it

1 done within the next week, hopefully.

2 THE COURT: How about your client, Mr. Braceras?

3 MR. BRACERAS: We're just in litigation, your Honor.

4 THE COURT: Why weren't you talking settlement?

5 (Interruption by automated telephone message.)

6 COURT REPORTER: I'm sorry, I can't hear you while
7 the phone is talking.

8 THE COURT: Is there anything that I can do to assist
9 in moving this case faster to resolution than it appears to be?

10 MR. BRACERAS: I think, your Honor, we've been
11 cooperating and speaking with Mr. Sobol. So, I think that
12 we're on the right track.

13 THE COURT: I'm not suggesting you're not
14 cooperating. I'm just trying to get resolution.

15 (Interruption by automated telephone message.)

16 THE COURT: Just let it go, Lisa. We'll talk around
17 it.

18 MR. BRACERAS: Your Honor, we'd never say never to,
19 you know, possible resolution.

20 THE COURT: Well, Mr. Sobol and Mr. Braceras and Mr.
21 Rehnquist, if you think of a way in which I can be helpful,
22 you let me know that.

23 MR. BRACERAS: We will, your Honor. Thank you.

24 THE COURT: Thank you.

25 MR. COREN: Your Honor?

1 THE COURT: Yes.

2 MR. COREN: Just apropos of the schedule -- Mike
3 Coren from the OCC creditors committee.

4 And your Honor has picked up on something, and that
5 is there is a window of opportunity here to participate and
6 use the bankruptcy and non-debtor releases both on the
7 national level and the clinic, but there's a finite time
8 because we have, as you see, to do the plan and submit it.
9 So, that deadline is going to be approaching quickly in this
10 summertime. So, now is the time or else that window of
11 opportunity will close and then it will be much more difficult
12 to resolve. So, whatever --

13 THE COURT: You mean the underlying dispute is
14 difficult to resolve or the distribution of any proceeds
15 difficult to resolve or both?

16 MR. COREN: Well, both because to the extent they
17 become aggregate settlements, the opportunity, the vehicle is
18 gone. So, it's an interesting situation where now is the time
19 to sit down and figure out what your liability is, such as the
20 cleaning service people, for example, and the other clinics
21 who have not wanted to come forward yet and try to resolve.

22 Both the PSC on the OCC are available. We're
23 amenable. We have the people who can handle the mediations.
24 It's just that, you know, it takes two to mediate. So,
25 whatever we can do.

1 THE COURT: I hear you.

2 MR. COREN: But how do we get those people to hear us?

3 THE COURT: Did you want to talk?

4 MR. FENNEL: (Shakes head.)

5 MR. BRACERAS: Your Honor, we also have a motion to
6 dismiss which could resolve the case even more quickly.

7 MR. SOBOL: Good luck with that.

8 MR. BRACERAS: We understand. We understand the
9 issues that are outstanding. We think that we have very
10 strong defenses, both by way of motion to dismiss and
11 otherwise, but we understand the message we're getting from
12 the Court and we'll thoroughly...

13 THE COURT: All right. Now the status of the
14 declaratory actions.

15 MS. JOHNSON: Thank you, your Honor.

16 There are two declaratory judgment actions that are
17 currently pending before Judge Saylor that involve Ameridose'
18 insurance coverage. There are -- the Plaintiffs' Steering
19 Committee has filed motions to intervene in both of those
20 actions to assert the rights of victims. Replies have
21 recently been filed in support of the plaintiffs' motion.
22 There is also a motion to stay that has been filed in at least
23 one, if not both, of those actions asking that those actions
24 be put on hold while some additional work is done in the MDL.
25 The Plaintiffs' Steering Committee will be responding to that

1 motion to stay on Monday, and there's also a hearing -- I
2 think, actually, it's styled as a status conference before
3 Judge Saylor on Monday.

4 As to the ARL Bio Pharma insurance declaratory
5 judgment action, that will be resolved as part of the ARL
6 settlement. So, you may not see that on here next month.

7 And, finally, as to the Michigan Pain Specialists'
8 declaratory judgment action. The complaint in that case has
9 recently been served. I understand that there's been an
10 extension of time to respond to that, and the PSC is
11 contemplating whether to move to intervene in that action as
12 well.

13 THE COURT: Any reason why you wouldn't?

14 MS. JOHNSON: I can't think of one right now, your
15 Honor.

16 THE COURT: Okay. Now, the status of discovery.

17 MS. JOHNSON: First, I would like to bring to the
18 Court's attention -- I'm sure the Court remembers at the last
19 status conference Mr. Gottfried represented that the Chapter
20 11 trustee had agreed to share some of the informally-produced
21 documents from New England Compounding Company with parties to
22 the MDL, provided that those parties sign a protective order,
23 and the PSC has also imposed on those parties a fee for
24 accessing the repository in which those documents are stored.

25 The PSC has received, I believe, three requests so

1 far from defendants to access those documents. I don't think
2 the details of those have been ironed out quiet yet, but it
3 should be the case that in the next two to three days those
4 defendants have access to the entire repository, which
5 includes documents formally produced in discovery here as well
6 as that universe of documents that Mr. Gottfried identified,
7 those informally-produced NECC documents.

8 THE COURT: Anybody else? Any comments on that?
9 Anybody wishes more or less?

10 (No response.)

11 THE COURT: Tennessee discovery issues.

12 MS. JOHNSON: I'll ask Mr. Gastel to address those.

13 MR. GASTEL: Real quickly -- sorry, it got turned off.

14 Real quickly, by way of background, in September of
15 last year, Judge Saylor issued MDL Order No. 7, which stated,
16 in relevant part, that discovery over unaffiliated defendants,
17 which the Tennessee defendants are, should be begin forthwith.
18 Thereafter the PSC served discovery in October, written
19 discovery on the overwhelming majority of the Tennessee-
20 related defendants. We got to varying degrees some responsive
21 answers to that written discovery in December. We have been
22 meeting and conferring on that discovery throughout the last
23 couple of months --

24 THE COURT: Excuse me.

25 The Tennessee defendants are the Tennessee clinic

1 defendants? Do they include the St. Thomas group?

2 MR. GASTEL: Yes. To be clear, discovery was served
3 on the Tennessee clinic defendants and the St. Thomas
4 entities. Discovery was not served on --

5 THE COURT: Is that the totality of the Tennessee
6 defendants?

7 MR. GASTEL: There's also the Ascension parties and
8 no discovery has been served on the Ascension parties.

9 THE COURT: Okay.

10 MR. GASTEL: Through that meet-and-confer process,
11 both counsel for the Tennessee clinic defendants and counsel
12 for the St. Thomas entities have taken the position that
13 discovery is not open as a result of the Court not entering a
14 discovery plan. We believe that the time is now ready to get
15 discovery rolling pursuant to that order.

16 THE COURT: This is No. 11 of the next part of the
17 agenda on the under part (b)?

18 MR. GASTEL: It is somewhat related to that issue,
19 yes. The --

20 THE COURT: Well, also 16.

21 MR. SOBOL: Yes.

22 MR. GASTEL: That is correct, your Honor. You have a
23 very firm grasp of the agenda and the relevant motions to
24 which this all relates.

25 So, I'll get to my point, which is that we anticipate

1 needing to file probably before the next status conference a
2 motion to compel those responses to discovery that was served
3 back in October specifically addressing the issue of whether
4 or not discovery is or is not open. The PSC's position is
5 that Judge Saylor's MDL Order No. 7 was clear that the
6 discovery is open and we should continue with written
7 discovery.

8 THE COURT: Let me ask you, to the extent that the
9 question of the Tennessee discovery issues is related to No.
10 11 and maybe No. 16, would it be useful to refer this matter
11 to Magistrate Judge Boal? There are a bunch of issues, as I
12 understand it, surrounding discovery issues. I gather there's
13 some fundamental differences between the plaintiffs and
14 defendants as to the order in which things should be done.

15 MR. GASTEL: I think that's a fair assessment of the
16 status of things and we would -- I believe we would agree a
17 referral to Judge Boal would be appropriate for this matter.

18 THE COURT: Are there any defense counsel here that
19 wish to respond? Yes.

20 MR. TARDIO: Good afternoon, your Honor. Chris
21 Tardio for the Tennessee clinic defendants.

22 I think your Honor has appropriately captured that
23 there is a fundamental dispute as to the order that some
24 things are going to go. Our position has always been that
25 we're willing to engage in written discovery to some extent,

1 but we would like some parameters in place. So, we would very
2 much appreciate a referral to Judge Boal.

3 THE COURT: Okay. Done.

4 MS. JOHNSON: Your Honor, if I may, two quick
5 comments on that.

6 No objection, certainly, to referring those matters
7 to Judge Boal, but I will preview two things for you:

8 The first is that there is some argument that No. 11,
9 which has been fully briefed and argued in front of Judge
10 Saylor, has been functionally denied by an order that Judge
11 Saylor entered. It was an electronic order, No. 731. I don't
12 want to argue that with you now. I understand Tennessee
13 counsel may take a different view of things, but just to
14 identify that issue in advance.

15 The other thing I would point out, your Honor, is
16 that No. 16, there is a good deal of No. 16 that deals with
17 discovery issues. There are, however, some other pretrial
18 matters that are included in that order, and I mention that
19 only in case your Honor may prefer to keep those other
20 pretrial matters for herself while asking Judge Boal to deal
21 with the discovery matters.

22 THE COURT: That's reasonable. Thank you.

23 MS. GREER: Your Honor, if I may address that. Marcy
24 Greer for the St. Thomas entities.

25 As Ms. Johnson indicated, there is disagreement over

1 whether Judge Saylor ruled on the discovery plan. He actually
2 asked the parties to meet and confer and that never happened
3 and the response to that request for discovery plan was their
4 motion for a Bellwether plan, was their response to Judge
5 Saylor's order to have us meet and confer on the discovery plan.

6 So, the parties have been trying to navigate all
7 these different interrelated issues. And so, we do see them
8 as being very much integrated and would benefit from,
9 hopefully, having it all decided by one judge.

10 THE COURT: Well, to the extent that there is
11 disagreement as to what Judge Saylor's order might mean, I'll
12 look at that. I'll decide it, but probably with the help of
13 Magistrate Judge Boal. In any event, it seems to me
14 appropriate to send the discovery piece of it to her.

15 Mr. Braceras.

16 MR. BRACERAS: I think we're basically all in
17 agreement. I think it's complicated to divide up 16, the
18 motion for Bellwether, between what's discovery, what's
19 pretrial. All discovery is pretrial and --

20 THE COURT: Right.

21 MR. BRACERAS: So, I would suggest referring it to
22 Judge Boal and the two of you working on it together rather
23 than trying to slice and dice it now.

24 THE COURT: Okay. Thank you all very much.

25 That brings us to scheduling argument on fully-

1 briefed motions to dismiss. I believe there are a couple of
2 those and we'll come to those.

3 MS. JOHNSON: There are, your Honor. I actually have
4 a list for you. We thought that may be helpful to the Court.

5 I appreciate that you were quite complimentary of our
6 agenda, but it's not actually as clear as I would like it to
7 be yet.

8 THE COURT: Well, I have -- 14(c) is a motion -- a
9 revised motion to dismiss briefing schedule, which includes a
10 hearing, I assume, and I have to set a hearing in 14(d). Is
11 that correct or incorrect?

12 MS. JOHNSON: I believe that both of those motions to
13 dismiss, both the BKC motion, which is (c), and APAC motion,
14 which is (d), would ultimately require hearings. We actually
15 -- if I could step back for a moment, your Honor.

16 THE COURT: Okay.

17 MS. JOHNSON: The Plaintiffs' Steering Committee has
18 spoken with counsel for the defendants for those motions that
19 are fully briefed or will be fully briefed before the next
20 status conference.

21 The PSC's suggestion -- and I'll provide you a list
22 of those motions, your Honor. The PSC's suggestion is that
23 the Court set time for oral arguments on those motions that
24 will be fully briefed before the next status conference. We
25 had thought it may make sense to do that either a day or two

1 on either side of the next status conference so as to perhaps
2 not try and compact everything on some of these complex
3 matters into one afternoon. We thought we might save you a
4 headache by doing that. We, of course, prefer the Court's
5 discretion on that. There are motions that are already for
6 oral argument to be scheduled, though, your Honor. I can
7 identify those for you.

8 THE COURT: Are they listed in some different way on
9 the briefing in progress or are they outside of that list?

10 MS. JOHNSON: They are listed in some way in the
11 briefing in progress. So, let me see if I can cut through
12 this and, hopefully, bring a little clarity to it.

13 The Plaintiffs' Steering Committee's 56(d)
14 response --

15 THE COURT: I'm sorry, which number?

16 MS. JOHNSON: 21(a), Sub i. 21(a) is the Tennessee
17 clinics defendants' motion for summary judgment. In response
18 to that motion for summary judgment, the PSC filed what used
19 to be called a 56(d) motion, is now called 56(d) response, I
20 understand. The 56(d) issue is ripe for -- it's fully briefed
21 and it's ripe for argument, your Honor. The summary judgment
22 motion to which a response is not --

23 THE COURT: I mean, they either get some additional
24 discovery or they don't, right?

25 MS. JOHNSON: That's correct, your Honor. And if

1 your Honor would prefer to decide that on the papers, the
2 plaintiffs would not have an objection to that.

3 THE COURT: Who is here -- is there anybody here for
4 the Tennessee clinic defendants? Yes. I'm sorry.

5 MR. TARDIO: Yes, your Honor. Chris Tardio.

6 I think we -- we're fine with deciding on the briefs.
7 I think that's something we addressed at the last status
8 conference.

9 THE COURT: Okay. So, the 56(d) motion, decide on
10 the papers quickly, right?

11 MS. JOHNSON: Yes, your Honor. Thank you.

12 The next motion that will be fully briefed and ready
13 for argument as of June 9th, which is before the next
14 status --

15 THE COURT: I'm sorry. Go back for a moment to the
16 -- so, I need to decide that motion in order to decide when
17 the rest of the motion is to be heard?

18 MS. JOHNSON: That's correct, your Honor.

19 THE COURT: Okay.

20 MS. JOHNSON: The next motion will be the Tennessee
21 clinic defendants' motion to dismiss for failure to comply
22 with the Tennessee Healthcare Liability statute. That's ECF
23 No. --

24 THE COURT: 70 -- no. 19, right?

25 MS. JOHNSON: No, your Honor. It's 21(d).

1 THE COURT: Oh, 21(d).

2 MS. JOHNSON: The motion itself is ECF No. 770,
3 related to --

4 THE COURT: Is it correct that the motion to dismiss
5 is based entirely on the Tennessee healthcare statute that
6 requires some kind of certificate when you file? And the
7 others are the ordinary common law tort claims?

8 MR. GASTEL: To be clear --

9 THE COURT: That is, the motion for summary judgment.

10 MR. GASTEL: 21(d), the motion to dismiss relates to
11 getting pre-suit notice under Tennessee Code Annotated 29-26-
12 121.

13 THE COURT: That's a certificate?

14 MR. GASTEL: The certificate is actually contained in
15 Tennessee Code Annotated 29-26-122 and is the subject of
16 21(a), the motion for summary judgment.

17 THE COURT: And is there any reason why they
18 shouldn't be heard together?

19 MR. GASTEL: I'm sorry. One point of clarification,
20 your Honor.

21 The issue of pre-suit notice under Section 121 is
22 raised by the Tennessee clinic defendants' motion to dismiss.
23 The issue of pre-suit notification is raised by the St. Thomas
24 entities and Ascension party's motion to dismiss, which are
25 both listed in 21(d).

1 THE COURT: Well, what's No. 19, then? Oh, no.
2 That's a motion to amend.

3 MS. JOHNSON: Yes, your Honor. No. 19 was an
4 assented-to motion. The Plaintiffs' Steering Committee agreed
5 to that motion.

6 THE COURT: So, that is allowed by agreement, right?

7 MR. GASTEL: That's correct, your Honor.

8 MS. JOHNSON: So, there's a second motion --

9 THE COURT: Didn't the St. Thomas defendants also
10 have --

11 MS. JOHNSON: If I may, your Honor.

12 THE COURT: St. Thomas also had motions to dismiss
13 based on the statute?

14 MS. JOHNSON: Yes, your Honor, that's correct. So,
15 there are two separate motions to dismiss based on an
16 interpretation of the Tennessee Healthcare Liability Act. The
17 first -- they're both listed under 21(d). The first is filed
18 by the Tennessee clinic defendants, which would be ECF 770.
19 The second was filed by both the St. Thomas entities and
20 Ascension, and that's ECF No. 779.

21 In addition to the motions to dismiss relating to the
22 Healthcare Liability Act, the Tennessee defendants have also
23 filed and we have now fully-briefed motions to dismiss that
24 address global claims. That would be No. 21(e). There are
25 three separate motions to dismiss on global claims under

1 21(e), one filed by the Tennessee clinic defendants which is
2 ECF No. 771, one filed by the St. Thomas entities which is ECF
3 No. 893, one filed by the Ascension parties which is ECF No.
4 895.

5 So, that's the universe of fully-briefed Tennessee-
6 related dispositive motions that we think are --

7 THE COURT: The statute.

8 MS. JOHNSON: The first of those address the statute
9 specifically, your Honor.

10 THE COURT: And the second ones do not?

11 MS. JOHNSON: The second ones are not just about
12 statute issues, that's correct.

13 THE COURT: Is there any reason why all of these
14 shouldn't be heard at the same time?

15 MS. JOHNSON: Our suggestion would be, in fact, that
16 they are all heard at the same time.

17 We would add to that, there is also a fully-briefed
18 motion to dismiss that relates to the New Jersey pain clinic
19 who is litigating, which is Premier. That is -- I'm sorry,
20 bear me.

21 (Pause.)

22 MR. ELLIS: No. 13.

23 MS. JOHNSON: No. 13.

24 The plaintiffs' suggestion is that all of those seven
25 motions that we have just identified, the six Tennessee

1 motions and the New Jersey motion to dismiss, should be
2 scheduled for oral argument perhaps on the same day near the
3 time of the next status conference.

4 THE COURT: So, 13(b), (c) -- pretty much all of 21
5 once we decide the 56(d) motion, right?

6 MS. JOHNSON: The only piece of 21 I think, your
7 Honor, that will not be fully ready by the next status
8 conference would be 21(a), because the Plaintiffs' Steering
9 Committee has requested that if you deny the 56(d), that we be
10 provided an opportunity to respond on the merits of the
11 summary judgment motion, 21(a).

12 THE COURT: And the summary judgment is a statutory
13 claim or a common law claim?

14 MR. GASTEL: Once again, the 21 --

15 THE COURT: I'm sorry. It gets too confusing.

16 MR. GASTEL: Fair enough.

17 21(a) is a motion to -- for summary judgment under
18 the Healthcare Liability Act and, more specifically, failure
19 to -- or alleged failure to provide pre-suit -- or, I'm sorry,
20 certification.

21 THE COURT: So that is the same issue that, in fact,
22 is ready with respect to other defendants under the motion to
23 dismiss?

24 MR. GASTEL: They're very similar, your Honor.

25 MS. JOHNSON: If the Court would prefer to address

1 all of those Tennessee-related issues together, the
2 Plaintiffs' Steering Committee would have no objection to
3 that. We would remind the Court that it really is a decision
4 on the 56(d) issue that is preventing that motion -- that
5 Tennessee summary judgment motion from being fully briefed.

6 THE COURT: Right. Now, if the 56(d) motion were to
7 be allowed, would the cases be ready for argument next month?

8 MR. GASTEL: I guess I'm a little confused. If the
9 56(d) is granted, then I assume that we would get discovery
10 and that the motion would be denied, presumably, without
11 prejudice.

12 THE COURT: Which motion?

13 MS. JOHNSON: The motion for summary judgment, your
14 Honor.

15 MR. SOBOL: 21(a) ii.

16 MS. JOHNSON: 21(a) is the motion for summary
17 judgment. If the 56(d) motion, which is 21(a) ii --

18 THE COURT: Well, why wouldn't the 56(d) motion
19 simply postpone hearing on the 56(a) motion?

20 MR. GASTEL: Yes.

21 MS. JOHNSON: That is precisely correct, your Honor.
22 That's absolutely --

23 THE COURT: But then it wouldn't be included in the
24 other motions that are ready for hearing by next month?

25 MS. JOHNSON: That's correct.

1 THE COURT: If the motion is denied, then it would be
2 ready because there's nothing else to do.

3 MR. CHALOS: Your Honor, if I may. Mark Chalos on
4 behalf of the plaintiffs.

5 The summary judgment motion raises statutory issues.
6 It also raises some other issues that we think require
7 discovery for us to fully respond to.

8 If your Honor were to hear the motions to dismiss, to
9 the extent there's overlap with the issues raised in the
10 summary judgment motion, you could decide those issues, and
11 there are some legal issues in there as well, and that would,
12 I think in part, help the parties work through the summary
13 judgment issues and may result --

14 THE COURT: On the other issues?

15 MR. CHALOS: I'm sorry?

16 THE COURT: Summary judgment on the remaining issues
17 contained in the summary judgment motion?

18 MR. CHALOS: Right. In other words, I don't think
19 your Honor has to hear the summary judgment motion at the same
20 time that your Honor hears the motions to dismiss in order to
21 resolve all of those issues. We can --

22 THE COURT: But the motion to dismiss issues,
23 statutory and otherwise, would -- any decision on them would
24 cover also the Tennessee clinic summary judgment motion to the
25 extent it raises those issues.

1 MR. CHALOS: Right, some portion of it. There are
2 also other issues in the summary judgment motion that I don't
3 think will be addressed and I think discovery will help the
4 parties, particularly the plaintiffs, to better respond on
5 some of those other issues in the summary judgment motion.

6 So, I think one possible course could be for your
7 Honor to hear the motions to dismiss on the issues that the
8 parties have fully briefed or will fully brief by the next
9 status conference, and if your Honor were to grant on the
10 56(d) on summary judgment, we can take the need for discovery
11 and whatever issues remain in connection with the summary
12 judgment motion, your Honor could take those up at a later day.

13 THE COURT: So, the next conference, I think, is
14 scheduled July -- no. June 19th.

15 MS. JOHNSON: Yes, your Honor.

16 THE COURT: Do you want to have a hearing at that time?

17 MS. JOHNSON: We would suggest perhaps a day on
18 either side.

19 THE COURT: Lisa, what can we do on either the 18th
20 or 20th?

21 (Discussion off the record at the bench.)

22 THE COURT: How about June 18th in the morning?

23 MS. JOHNSON: That works for the Plaintiffs' Steering
24 Committee, your Honor.

25 THE COURT: Does it work for all of -- those of you

1 who need to be arguing?

2 MR. TARDIO: Yes, ma'am.

3 MS. GREER: Yes, your Honor.

4 THE COURT: How about 9:30 on June 18th?

5 MR. WOLK: Christopher Wolk for the Premier
6 defendants in New Jersey.

7 Would that also include the New Jersey motion to
8 dismiss as well?

9 THE COURT: You tell me.

10 MS. JOHNSON: The Plaintiffs' Steering Committee
11 would suggest we should create some --

12 THE COURT: You're included, too.

13 MR. WOLK: Very good.

14 MR. ABELN: Anthony Abeln on behalf of BKC
15 defendants.

16 I think also a completed brief that can be argued --

17 COURT REPORTER: I'm sorry, I can't hear you.

18 THE COURT: I can't either.

19 MR. ABELN: I'm sorry, your Honor. Anthony Abeln on
20 behalf of BKC clinic.

21 That also is a motion to dismiss that's completed
22 briefing.

23 MS. JOHNSON: 21(g), your Honor.

24 MR. ABELN: 21(g), correct.

25 It may be worthwhile to schedule it as well. That

1 specifically deals with all the issues of Ohio law.

2 THE COURT: There's no reason not to include them, is
3 there?

4 MS. JOHNSON: They should be included as well, your
5 Honor. My oversight.

6 MR. ABELN: Thank you, your Honor.

7 THE COURT: So, what we have now is (c), (d), (e),
8 (f), (g). And what else? There is also UniFirst's motion to
9 dismiss. That's you, isn't it, Mr. Braceras?

10 MS. JOHNSON: That will not be completely briefed.

11 MR. BRACERAS: That's not fully briefed, your Honor.

12 THE COURT: (i), Does the proper affidavit of merit
13 refer to the same healthcare statute?

14 MS. JOHNSON: I'm not sure, your Honor. What I would
15 suggest, if it may be helpful, the PSC would be glad to file
16 what we believe are all of the fully-briefed motions that
17 could be heard for argument on that day, including identifying
18 all of the ones that we've just discussed, but I can also get
19 you a much clearer answer on (i) and (j), and whether they
20 will be done by then I'm not certain.

21 THE COURT: Okay. Because Ms. Urso will need to send
22 out notices and she will need to know not only which motions,
23 but to whom to send the notices.

24 MS. JOHNSON: Yes, your Honor, and we will, of
25 course, confer with defense counsel on that list as well.

1 THE COURT: Okay. Let us try to agree that PSC and
2 the principal defendants, that is the proponents of the
3 motion, take no more than half an hour to argue and PSC no
4 more than half an hour, with some minor leeway to respond,
5 okay?

6 MR. SOBOL: Does that make up for the page limits?

7 THE COURT: I'm sorry?

8 MR. SOBOL: Does that make up for the page limits?

9 THE COURT: Maybe.

10 MR. CHALOS: Your Honor, before we leave the
11 Tennessee motions, there is another --

12 THE COURT: You need to talk into the microphone
13 because the people on the telephone can't hear you.

14 COURTROOM DEPUTY CLERK URSO: They're not there.

15 MR. CHALOS: I'm not sure there's anybody there.

16 THE COURT: Don't bother with them. You can bother
17 with me.

18 MR. CHALOS: Your Honor, before we leave the
19 Tennessee motions -- this is Mark Chalos on behalf of the
20 plaintiffs. There is a motion, Docket No. 1100, one one zero
21 zero. It's an assented-to motion. It does two things. It
22 sets forth some deadlines for briefing that have now passed
23 and the parties have complied with it, but it also sets forth
24 the three agreed-upon areas where the parties --

25 MS. JOHNSON: That would be 21(e) ii, your Honor.

1 MR. CHALOS: It's on Page 5 of the agenda. It sets
2 forth three areas where the parties agree that those issues
3 were sufficiently global for purposes of briefing and the
4 parties agreed to brief those and present those to the Court
5 now, while reserving for later decision in case-specific
6 issues, such as so-and-so delivered to the door when they were
7 supposed to deliver --

8 THE COURT: If there's no objection to doing it, I
9 don't object.

10 MR. CHALOS: Okay. So, the order has been presented
11 to the Court as an assented-to order. So, we would ask that
12 your Honor enter that order, then, to make sure the record is
13 clear on that and all parties understand where we are.

14 THE COURT: I think there was somewhere in here an
15 order that I -- oh, yes, there was an order under 14(b) for
16 revised motion schedule, and I have signed that order today.

17 MR. CHALOS: Right. And that, I think, relates to a
18 different set of motions.

19 THE COURT: It does. I didn't understand your -- but
20 if there is an order and Ms. Johnson agrees, then it's fine
21 with me.

22 MS. JOHNSON: There is one other matter, your Honor.

23 We've deviated a little from the agenda, but No. 9 on
24 Page 2, there is an attorney who is seeking to withdraw as
25 counsel for plaintiff.

1 THE COURT: Yes. I wish your views on that.

2 MS. JOHNSON: I have to confess, your Honor, I'm not
3 in a position to offer you a view on that motion.

4 THE COURT: Excuse me. Is it your motion?

5 MS. BUELL: No, your Honor. I'm opposing it.

6 MS. JOHNSON: There was a request by plaintiff's
7 counsel that they be permitted to argue that by phone. I
8 understand we're not connected on the telephone.

9 THE COURT: I'm not sure why we need to have
10 argument. As I understand it, counsel want out because he has
11 a conflict, and I guess the -- you are who? And you represent
12 whom?

13 MS. BUELL: I'm Barbara Buell and I represent the
14 Hahnemann defendants. Hahnemann Hospital and --

15 THE COURT: Right. Right.

16 MS. BUELL: And the --

17 THE COURT: How can I keep counsel in who has an
18 admitted conflict?

19 MS. BUELL: Because, your Honor, I think that if you
20 keep counsel in, it will serve to have counsel resolve the
21 conflict with his client. This client did not get this drug,
22 the drug that is the subject of the MDL, at all.

23 THE COURT: But that's the conflict, isn't it?

24 MS. BUELL: That is the conflict, your Honor, but if
25 counsel is permitted to withdraw, having brought the case, he

1 will leave a -- effectively, a pro se plaintiff in an MDL case
2 in which there's no factual underpinning for that plaintiff
3 being in the case, and it will simply leave to the Court -- to
4 the court system and potentially to defense counsel the
5 problems of dealing with this plaintiff, a lay person. I
6 think it's a situation that the Court -- the Court would be
7 left to mop up a problem, unfortunately, created by plaintiff
8 counsel.

9 THE COURT: Why do you say that? As I understand the
10 papers and the case so far, counsel proceeded on the
11 assumption that the client was telling him the truth and then
12 found out that he or she wasn't. Isn't that what the papers
13 say?

14 MS. BUELL: Well, I don't know that the --

15 THE COURT: I don't know whether that's correct or
16 not.

17 MS. BUELL: I don't know that there was any lack of
18 truthfulness, but that either --

19 THE COURT: Or a misunderstanding.

20 MS. BUELL: A misunderstanding or perhaps a hope on
21 the part of plaintiff's counsel, but it turns out that the --
22 that particular plaintiff did not receive this drug and,
23 therefore, this hospital and physician and others should not
24 be in this case and to keep them --

25 THE COURT: Is that the only plaintiff that brought

1 your client into the picture?

2 MS. BUELL: Yes.

3 THE COURT: Well, let me think about it.

4 MS. BUELL: Thank you, your Honor.

5 THE COURT: Mr. Sobol.

6 MR. SOBOL: Just one thing from the point of view
7 from the Plaintiffs' Steering Committee, your Honor. If the
8 Court allows the motion, which, of course, is well within its
9 discretion, particularly given the papers that have been filed
10 by counsel, we simply want to make sure that the withdrawing
11 counsel provides a good address by which the Plaintiffs'
12 Steering Committee can provide notice of the proceedings to
13 the pro se plaintiff so we make sure that we're protecting
14 that party's rights.

15 THE COURT: Okay. Now, we have -- No. 10 is in my
16 court and I'm working on it. No. 11, I think, is the one that
17 we have sent to Judge Boal.

18 MS. JOHNSON: Yes, your Honor.

19 THE COURT: No. 12, I don't really know what the
20 status of that is, nor what, if anything, I should do about
21 it. There is a motion to extend the time to respond and maybe
22 that makes it unripe and that motion is allowed.

23 MR. MORIARTY: We have no objection to the motion to
24 respond because we're in the process of negotiating. We have
25 a potential -- or a proposed resolution of a large chunk of

1 this motion, that the PSC and the Tennessee defendants and the
2 UniFirst defendant now have in their hands a proposed order
3 for you to sign that resolves one -- or a big chunk of this
4 debate. So, we will work out the terms of the order, submit
5 it to you, hopefully this week, and then I will continue to
6 negotiate with UniFirst and the Tennessee defendants on the
7 recalled products that are not subject to the order we'll give
8 you.

9 THE COURT: Thank you. But, in the meantime, you
10 don't have to worry about the 9th. You got until the 23rd.

11 MR. MORIARTY: Thank you.

12 MS. JOHNSON: Your Honor, if I could preview --

13 THE COURT: This is Docket No. 1099.

14 Sorry. Go ahead.

15 MS. JOHNSON: The Plaintiffs' Steering Committee
16 filed a response in which we took no position based on our
17 understanding of what that motion has requested. There is a
18 question, though, we think, in terms of whether that motion
19 would apply to products -- any products that were created,
20 manufactured or compounded in the Framingham facility where
21 the NECC products were contaminated, and we'll work with Mr.
22 Moriarty to try to get resolution on the Plaintiffs' Steering
23 Committee's question on that.

24 THE COURT: Good.

25 Now comes the Premier Orthopedic No. 13, which is

1 based on New Jersey law, as I understand it. And my question
2 was whether we need to hear argument on that.

3 MS. JOHNSON: The Plaintiffs' Steering Committee
4 suggests that it might be helpful for the Court to hear
5 argument. So, we would ask for that.

6 THE COURT: This is separate from the Tennessee
7 issues, right?

8 MS. JOHNSON: It is separate from the Tennessee
9 issues, yes. I believe we've already set that for argument on
10 the 18th.

11 THE COURT: So, that's part of that?

12 MS. JOHNSON: Yes, your Honor.

13 No. 14 is just a series of proposed briefing
14 schedules that we're seeking Court approval. I believe all
15 are assented to.

16 THE COURT: Okay. So, now (a) is allowed -- well,
17 it's okay. We'll have a -- we'll get an order. Do you want
18 me to make that up or are you going to make it up?

19 MS. JOHNSON: We'll submit that to the Court, your
20 Honor.

21 THE COURT: Okay. (b) is an order that I've signed.
22 I can't remember where it is now.

23 And (c), I think that is part of June 18th, is it
24 not?

25 MS. JOHNSON: Yes, your Honor, it is.

1 THE COURT: And (d), you will give me a hearing --
2 you will give me a proposed order for that one, too?

3 MS. JOHNSON: Yes, your Honor, we will.

4 THE COURT: Then we come to 15, which has part (a).
5 That is allowed. That is the motion to join. Unless there's
6 an objection.

7 MS. JOHNSON: I'm sorry, your Honor. 15(a)?

8 THE COURT: 15(b) -- there are two (a)'s.

9 MS. JOHNSON: Oh, goodness.

10 THE COURT: And then there was a motion to join. The
11 motion to join is allowed. And I need to decide 15.

12 MS. JOHNSON: Yes. Thank you.

13 MR. GOTTFRIED: Yes, your Honor.

14 15, as you may recall, we did argue that to you at
15 the last status conference.

16 THE COURT: Right.

17 MR. GOTTFRIED: And at least the trustee's position
18 was that the stay should be kept in place, at least until
19 Judge Baroff has a chance to decide whether he's going to
20 approve the settlements and, as we discussed earlier today, we
21 would anticipate that there would be a motion from the trustee
22 which the PSC and the OCC would join in which we would file
23 within ten business days of the approval of that, which would
24 address this issue, and I think the stay should continue
25 through your decision on that motion.

1 THE COURT: Okay. Then there is the entry of
2 Bellwether and pretrial schedule order, which we agreed Judge
3 Boal would include in her activities.

4 And then No. 17 is the trustee's supplemental motion
5 to transfer. I will allow that as of today. You will have an
6 opinion by the end of the week.

7 MR. GOTTFRIED: Thank you, your Honor.

8 THE COURT: Then we come to briefing in progress.
9 Ms. Johnson.

10 MS. JOHNSON: There are a few things here I think we
11 can clean up, your Honor. The first, No. 18, given the
12 settlement, while the settlement has not been approved, it
13 does appear that it will not be necessary for the PSC to file
14 a master complaint against the affiliated defendants.

15 As a procedural matter only, the current deadline for
16 that is April 30th, 2014. We suggest -- while we think that's
17 moot, perhaps in the interim until the settlement is approved,
18 the Court agrees to an additional extension of time. So, we
19 hope that never comes to pass, to be clear.

20 THE COURT: So, the time to file master complaint is
21 extended to when?

22 MS. JOHNSON: Perhaps September 1st, to be absolutely
23 safe. September 2nd, which may be a business day. I'll keep
24 going, September 3rd.

25 THE COURT: September 2nd.

1 MS. JOHNSON: There we go. Thank you, your Honor.

2 And No. 20, the St. Thomas entities' motion to modify
3 case management order No. 6, we think that has been
4 functionally mooted by the trustee's willingness to provide
5 the informally-produced NECC materials.

6 THE COURT: Is that agreed by everybody who is
7 affected?

8 MS. GREER: Your Honor, if we could keep it pending.
9 Marcy Greer for the St. Thomas entities. Keep it pending
10 while we work through the details, because the access was only
11 one piece of that motion.

12 THE COURT: Okay.

13 MS. JOHNSON: No. 21, your Honor, I think we've
14 addressed fully. And that brings us to the end.

15 THE COURT: Right. Is there anything else that
16 anybody has to bring to the Court?

17 (No response.)

18 THE COURT: Well, as usual, you've done a fantastic
19 job. I thank you all. And we will see each other on June
20 18th and then again on June 19th.

21 MS. JOHNSON: I'm sorry, your Honor. One small
22 thing. We do not have a date for an August status conference.
23 I think the Court --

24 THE COURT: Yes. In August, I'm proposing August 14.

25 (Discussion off the record at the bench.)

1 THE COURT: I'm sorry, I need to change the July
2 date. I have a problem with July because I have a meeting
3 July 8th, 9th, and 10th, and then I'm on vacation the
4 following week through the 23rd. If you want, the only time
5 we could do it, very early in July, which doesn't make a whole
6 lot of sense, or the 28th or 29th or we could skip July.

7 COURTROOM DEPUTY CLERK URSO: Can we skip July and go
8 to the August 14th date?

9 MR. SOBOL: Why don't we do that and if we need
10 something in particular --

11 THE COURT: You'll call.

12 MR. SOBOL: Yes.

13 THE COURT: Let Ms. Urso know and you'll work it out.

14 I thank you all for my vacation. I hope you will
15 have one, too.

16 MR. FERN: 2:00 p.m., on the 14th?

17 COURTROOM DEPUTY CLERK URSO: No. So, July 17th is
18 gone. So, the August 14th date is going to be at 2:30, okay?

19 MR. MORIARTY: Your Honor, I hate to go back to one
20 matter, but on that order, the proposed order that we are
21 going to submit, I forgot that the DEA is waiting for word
22 from my client on when we're going to destroy the scheduled
23 drugs. What do you --

24 THE COURT: Give me the order and I'll sign it.

25 MR. MORIARTY: Okay. I'm just wondering, do you want

1 us to put it through ECF or send it to you separately by a
2 letter?

3 THE COURT: You can do it through ECF.

4 MR. MORIARTY: Okay. Thank you.

5 THE COURT: Anything else?

6 (No response.)

7 THE COURT: Thank you all again.

8 MR. BRACERAS: Thank you, your Honor.

9 MS. JOHNSON: Thank you, your Honor.

10 (Adjourned, 3:11 p.m.)
11

12 C E R T I F I C A T E

13 I, Catherine A. Handel, Official Court Reporter of the
14 United States District Court, do hereby certify that the
15 foregoing transcript, from Page 1 to Page 50, constitutes to the
16 best of my skill and ability a true and accurate transcription of
17 my stenotype notes taken in the matter of No. 13-md-2419-RWZ, In
18 Re: New England Compounding Pharmacy, Inc., Products Liability
19 Litigation.
20

21 May 14, 2014
22 Date

/s/Catherine A. Handel
Catherine A. Handel RPR-CM, CRR
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25